

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
EASTERN DIVISION**

RICKY DEWAYNE SMITH,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 3:07-cv-965-MEF-WC
)	
TOMMY BOSWELL, et al.,)	
)	
Defendants.)	

DEFENDANTS' MOTION TO DISMISS

COME NOW the Defendants, Russell County Sheriff Tommy Boswell (hereafter, "Sheriff Boswell"), Lieutenant Loetta Holland (hereafter, "Lieutenant Holland"), Nurse Tina Riley-Pelfrey (hereafter, "Nurse Riley"), and Doctor Stu Warr (hereafter, "Dr. Warr"), and move this Honorable Court to dismiss this action against them pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure for Plaintiff's failure to state a claim upon which relief can be granted. As grounds therefor, Defendants set down and assign the following:

1. The Plaintiff filed the instant lawsuit against Defendants on October 26, 2007, alleging, pursuant to 42 U.S.C. § 1983, deprivation of his rights under the Eighth and Fourteenth Amendments to the United States Constitution. The Complaint appeared to seek declaratory relief, as well as compensatory and punitive damages. On November 2, 2007, this Court ordered the Plaintiff to file an amended complaint detailing more specifically his incarceration status, and the facts of his complaint. On November 14, 2007, the Plaintiff filed his Amended Complaint.
2. The Plaintiff's claims against the Defendants are due to be dismissed because the Plaintiff's claims are moot, and the Plaintiff lacks standing to bring his claims.
3. The Plaintiff's claims against the Defendants are due to be dismissed because any

official capacity claims against the Defendants are barred by the Eleventh Amendment to the United States Constitution.

4. The Plaintiff's claims against the Defendants are due to be dismissed because the Defendants, in their official capacities, are not "persons" for purposes of 42 U.S.C. § 1983.

5. The Plaintiff's claims against the Defendants are due to be dismissed because the Defendants are entitled to qualified immunity

WHEREFORE, ABOVE PREMISES CONSIDERED, Defendants Russell County Sheriff Tommy Boswell, Lieutenant Loetta Holland, Nurse Tina Riley-Pelfrey, and Doctor Stu Warr move this Honorable Court to dismiss this action against them pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure for failure to state a claim upon which relief can be granted.

Respectfully submitted this 25th day of January, 2008.

s/Scott W. Gosnell
SCOTT W. GOSNELL (GOS002)
Attorney for Defendants

OF COUNSEL:

WEBB & ELEY, P.C.
7475 Halcyon Pointe Drive (36117)
P.O. Box 240909
Montgomery, Alabama 36124
Telephone: (334) 262-1850
Fax: (334) 262-1889
E-mail: sgosnell@webbeley.com

CERTIFICATE OF SERVICE

I hereby certify that on this the 25th day of January, 2008, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system and certify that I have mailed by United States Mail, postage prepaid, a true and correct copy of such filing to the following non-CM/ECF participant:

Ricky Dewayne Smith
c/o Faith Rescue Mission
108 Camden Street
Montgomery, Alabama 36108

s/Scott W. Gosnell
OF COUNSEL